

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID S. PETERSON,

Petitioner,

v.

No. CIV-06-1065 BB/ACT

ROBERT ULIBARRI, WARDEN,

Respondent.

MEMORANDUM OPINION AND ORDER

This matter is before the Court for preliminary consideration of Petitioner's petition for writ of habeas corpus under 28 U.S.C. § 2241. Petitioner has moved for leave to proceed in forma pauperis. He alleges that Respondent refuses to provide a vegetarian diet in conformity with Petitioner's religious beliefs, in violation of certain of his constitutional protections. For relief he asks that the Court enter an order compelling Respondent to provide a vegetarian diet.

Petitioner's allegations do not support claims for relief under the habeas corpus statutes. A petitioner who challenges conditions of confinement and not the fact or duration of confinement must pursue his claims under the civil rights statutes. *See Rael v. Williams*, 223 F.3d 1153, 1154 (10th Cir. 2000); *and see Boyce v. Ashcroft*, 251 F.3d 911, 914 (10th Cir. 2001). Here, Petitioner complains exclusively of the conditions of his confinement; he does not challenge his conviction or seek reduction of his sentence. His claims may be pursued only under 42 U.S.C. § 1983. *See Rael*, 223 F.3d at 1154. The Court, therefore, construes the petition as a civil rights complaint, and Petitioner will be referred to hereafter as the Plaintiff.

Under 28 U.S.C. § 1915(b)(1), an inmate plaintiff proceeding in forma pauperis is required to submit an initial partial payment toward the \$350.00 filing fee. According to Plaintiff's filings and the calculation provided in § 1915(b)(1), Plaintiff must make an initial payment of \$4.35. Any papers that Plaintiff files in response to this order must include the civil action number (CIV 06-1065 BB/ACT) of this case. Failure to submit the payment may result in dismissal of the complaint.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus is construed as a prisoner civil rights complaint, and the Clerk is directed to correct the docket accordingly;

IT IS FURTHER ORDERED that Plaintiff's motion for leave to proceed pursuant to 28 U.S.C. § 1915 is GRANTED; and, within thirty (30) days from the date of this order, Plaintiff shall make an initial payment of \$4.35;

IT IS FURTHER ORDERED that Plaintiff submit monthly financial certificates with payments of twenty per cent (20%) of the preceding month's income credited to his account, or show cause why he has no assets and no means by which to pay the designated filing fee. The Clerk shall provide Plaintiff with two copies of the post-filing financial certificate.


UNITED STATES DISTRICT JUDGE